

REMARKS

Claims 1, 3-11 and 14-47 are pending in the application. Claim 29 has been amended to correct informalities. No new matter has been introduced.

The Examiner has rejected Claims 1, 4-9, 14, 15, 29-33, and 38-43 under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 3,713,441 to Thomas (hereinafter "Thomas") in view of U.S. Patent No. 6,743,243 to Roy et al., (hereafter "Roy") and further in view of U.S. Patent No. 6,726,923 to Iyer, et al. (hereafter "Iyer"). Applicants respectfully submit that the rejection is overcome in light of the following remarks.

Claim 1 recites a device for creating an anastomosis between first and second blood vessels. The device includes a substantially cylindrical body at least partially formed by a resorbable sponge material, a first securing means for securing an end of the first vessel to the body, and a second securing means for securing a portion of the second vessel to the body. The body includes an inner surface defining a through opening configured to receive at least a portion of the first vessel. The body further includes a proximal surface configured to appose an outer surface of the second vessel, a distal surface distanced from the outer surface of the second vessel, and a side surface connecting the proximal surface and the distal surface to form a substantially uniform outer diameter of the body. The through opening extends from the proximal surface to the distal surface. The first securing means is adapted to adhesively secure at least an end of the first vessel to the through opening. The second securing means is adapted to secure the outer surface of the second vessel to the proximal surface of the cylindrical body, such that a hole formed in the outer surface of the second vessel is in fluid communication with the end of the first vessel.

Claim 29 recites a method for creating an anastomosis between first and second blood vessels. The method includes, *inter alia*, handling a substantially cylindrical body at least partially fabricated from a resorbable sponge material. The body includes an inner surface defining a through opening configured to receive at least a portion of the first vessel. The body further includes a proximal surface configured to appose an outer surface of the second vessel, a distal surface distanced from the outer surface of the second vessel, and a side surface connecting the proximal surface and the distal surface to form a substantially uniform outer diameter of the cylindrical body. The through opening extends from the proximal surface to the distal surface of the cylindrical body. The method further includes adhesively attaching a portion of the first vessel to the inner surface of the cylindrical body, attaching the portion of the second vessel to said proximal surface of the cylindrical body, and creating an anastomosis between the first and second vessels and through the through opening in the body.

Turning to the prior art, Thomas is directed to a method of using an artery-vein shunt for hemodialysis purpose. The shunt has an elastomeric tube (21), a graft material (23) secured to one end of the elastomeric tube and attached to a vessel during operation, and an infection barrier wrap (22) continuous with the graft material. Specifically, as cited by the Examiner, the graft material is made of knit, woven, felt or other opening construction (*see*, Col. 2, Lines 22-23 of Thomas). The Examiner has relied on the combination of the infection barrier wrap and the graft material for the alleged teaching of the cylindrical body recited in Claims 1 and 29 (*see*, Page 3, Lines 9-11 of the Action).

Applicants respectfully disagree for the following reasons.

In the first instance, Thomas teaches a torus-shaped graft material externally sutured to a vessel. The graft material is extended by the infection barrier wrap, which is smaller

in diameter relative to the graft material. In contrast, Claims 1 and 29 recite a substantially cylindrical body including, *inter alia*, a proximal surface configured to appose an outer surface of the second vessel, a distal surface distanced from the outer surface of the second vessel, and a side surface connecting the proximal surface and the distal surface to form a substantially uniform outer diameter of the body. All words in a claim must be considered in accessing the patentability of same against the prior art. *In re Wilson*, 424 F2d 1382, 1385 (CCPA 1970) Hence, the recitation of Claims 1 and 29 are distinguished from Thomas. .

Furthermore, Thomas is directed to a shunt used in hemodialysis surgery, in which an elastomeric tube (21) is connected to a hemodialyzer. In contrast, Claims 1 and 29 are directed to a device and method for creating an end-to-side anastomosis between first and second vessels.

Roy is relied on for the alleged teaching of a securing means for attaching a tubular member to a vessel. Iyer is relied on for the alleged teaching of a resorbable sponge. Neither Roy nor Iyer remedy the underlying deficiencies of Thomas with respect to Claims 1 and 29.

Thus, none of the cited references, taken alone or in combination, teach or suggest the combination of features recited in Claims 1 and 29, from which all the other claims depend.

Accordingly, the rejection of Claims 1, 4-9, 14, 15, 29-33, ad 38-43 under 35 U.S.C. §103(a) based on the hypothetical combination of Thomas, Roy and Iyer is overcome, and withdrawal thereof is respectfully requested.

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Frank S. DiGiglio', with a stylized flourish at the end.

Frank S. DiGiglio
Registration No. 31,346

SCULLY, SCOTT, MURPHY & PRESSER, P.C.
400 Garden City Plaza, Suite 300
Garden City, New York 11530
516-742-4343 - Telephone
516-742-4366 - Fax

FSD/HC/ech